

International Crime and its Subsequent Development

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Abstract

'Does International Criminal Law exist?' is the most debatable question in the modern day legal literature. Some scholars are of the opinion that it exists arguing that it derives its source from the International Law which is accepted and recognised by all civilized nations. Many other scholars showed their reservations on the concept of universal jurisdiction of a crime. They argue that the diversification of culture, norms and traditions are the biggest hurdle in the way to declare any crime International, for example killing is not universally condemned, and is acceptable in many countries if performed in self defence.

Key words

International Crime, Civil Liberty, International Criminal Court

What is an International Crime?

A "Crime" is an act that violates a political or moral law while an "International Crime" means an act which is recognised by the International community as a crime. It is essential for the International Crime that a criminal act must not only be recognised by the state's criminal law but is so heinous that it takes the attention of International community and their concern becomes necessary.

There are several reasons; that few crimes cannot be left only to the discretion of the state, which would normally have jurisdiction over it to adjudicate upon the said crime. Almost all International Crimes qualify not only as serious human rights violations but they also violate International Humanitarian Law. These crimes should be categorized according to their severity and impact on people worldwide. Many legal scholars are of the opinion that the concept of International Crime can be recognised universally with an apprehension that its structure and operational mechanism is still not clear. The diversification in our world and rapid complex development of a global society has made it very difficult to clearly urge the concept of universality of a crime. However, International crime can derive its source from International Law. International law is recognised and accepted by most of the civilized nations of the world and therefore, can be founded in the customary laws of the state. To sum up, we can define "International Crime" as a crime that crosses International borders and is usually committed by International criminal groups.

The treaties and conventions which govern the particular conduct of a crime can be recognised universally. A heinous crime which has adverse effects on the International Community can be added to the list of

International crime. Moreover, if a crime is very brutal, affecting the interest of more than one state and also threatens world order and security, can also be recognised as an International crime. According to the Rome's statutes 2002, International criminal court can take cognizance of four International crimes. 1. Mass murder. 2. Crimes against humanity. 3. War crimes and 4. Genocide.

History of an International Crime

Human history is the witness of mass killing and brutality which can be traced back from time immemorial, e.g. the huge massacres that occurred during the First World War where hundreds of thousands of Armenians were killed. Incidents of similar intensity happened during the second world war when Hitler killed millions of Jews, and called it a "final solution" reminding his Generals "nobody remembers the Armenians."

Concept of International Crime

The concept of International Crime is that every individual is held responsible for the wrong actions; whether he is a civilian or a soldier. During war every officer is responsible not only for his own actions but also of his subordinates.

International Crimes always depend on treaties, conventions, agreements and customary laws. The rules, values and norms, which International community considers most important and wishes to protect, are safe guarded through them. Thus, we can say that those rules intending to protect values considered important by the International community and consequently binding all states and individuals, are safe guarded by international instruments such as United Nation Charter, African Charter on Human and People's Right, European Convention on Human Rights etc.

The most significant aspect of these conventions are that it protects those values which are common to all states and if member states consider a particular crime to be suppressed, it can be taken into consideration as a part of International Criminal Law. Mostly, these crimes are very dangerous for humanity regardless of state boundaries, colour, race and religion. International Law treaties can only be applicable on those states that are signatory, and are bound to follow them; any other state which is not a part of the treaty is exempted, and does not come under the provisions of the customary law.

Crimes were committed in the past too and they, too were of a dreadful nature like these days. But there were no such treaties as mentioned above. There arises a question: what is the need of these treaties? The answer is that the treaties can make states to respect the rules and at the time of violation punish the wrong doers. International Crime has its source in an International treaty or convention.¹

What 'Crimes' can be Considered as 'International Crime'?

Crimes of universal jurisdiction are generally those which are so abhorrent that they are viewed not only as criminal behaviour in the domestic law sense, but as an attack upon international safety or order. In order to declare a "Crime" as an "International Crime" it must cover the following.²

- There should be a treaty or some customary rules among the states to declare an act as a crime.
- All member States legislate and try to protect those values, which they consider to be common among them.
- Those Crimes can be known as International Crimes, which are suppressed by states in universal interest.

What Makes it International?

- The crime is not against one community or group but it has a tendency to damage a large area.
- The intensity of the crime is so heinous that it shocks the whole international community.
- The act of that crime is against the common moral standards and should be condemned internationally.

Salient Features of an International Crime

International Crimes cover the following acts. These acts are heinous and violent that's way they have been declared as an International Crimes. International Criminal Court enjoys subject matter jurisdiction over four core offences; genocide, crime against humanity, war crimes and aggression or mass murder.

1. Genocide

The word genocide means killing of a tribe or group. This word has many folds, Raphael Lemkin a famous jurist,³ coined the term genocide in his book.⁴ He defined genocide as "a coordination plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves." The word genocide has a vast meaning, it includes the objective of a plan to disintegrate the political and social institutions of culture, language, national feelings, religion and the economic existence of national groups, it also covers the destruction of personal security, liberty, health, dignity and even the lives of individuals belonging to such groups. Genocide is the deliberate extermination of a racial, religious or ethnic group.⁶

2. Crime Against Humanity

A crime which is committed in armed conflicts, is widespread or systematic attack on any civilian population is said to be a Crime Against Humanity'. Mainly, because it also attacks those who are not part of this barbaric game. Thus it is an attack on human dignity. We can see glimpses of such crime in 1915 when the Turkish Government had used their power against the Armenians and by committing the great massacres of Armenians in the Ottoman Empire.

3. Acts of Aggression

The word "Aggression" can be defined as "the object of establishing a military occupation of, or annexing, the territory". Thus, it is crime against peace, aggression also include preparation, planning, initiation or waging war of aggression. Aggression is also very dangerous because it usually results in violation of international treaties, agreements or assurance.

4. War Crimes

War crimes have been defined as "Grave" or "serious" violation of the rules or customs of war. War crimes include arbitrary killing, torture, inhuman or degrading treatment, rape, unfair trials, wanton destruction of property etc. War crimes can also be committed by the military personals against the enemy servicemen or civilians. These crimes can be considered as the serious violation of international humanitarian laws of armed conflict.

5. Terrorism

Nowadays terrorism is becoming a threat to many nations. It means the use of violence against the non-war targets to achieve some gains; it can be political or economical. Terrorist attacks have become a threat to many as they aim to target the innocent people and not a particular group or state. After the 09/11 attack on the United States of America, Terrorism is considered to be an 'International Crime'.

6. Torture

Torture can be defined as the most offensive act. Torture has now been universally accepted as repugnant and is prohibited under customary international law and is generally recognized as "*jus cogens*". Article 5 of *Universal declaration of human rights* protects from torture, cruel, inhuman, degrading treatment or punishment universally.

"Torture is not only one of the vilest acts that one human being can inflict on another, it is also the worse kind of crime in which victims are often too shamed

or traumatised to speak out, or face further peril if they do; often, they die from their wounds. Perpetrators, most of the times are shielded by conspiracies of silence and by the legal and political machinery of that resort to torture".⁷

What is the Need to Recognise Some Crimes at an International Level?

It is an established principle of criminal law that the punishment of a criminal act must be publically known. After the Second World War there was a desperate need to recognise some crimes internationally. Almost all the states have a mechanism to prosecute a criminal in peace time while during hostility between the two states a mechanism was needed in order to take the cognizance of the criminal act during the war.

Adolph Eichmann,⁸ a German national and the head of the Jewish office of the Gestapo, had been primarily responsible for administering Hitler's "Final Solution". Israeli secret agents found him in Argentina in 1960 and abducted him, taking him to Israel to the charges of crimes against humanity and war crimes against Jewish people. It was argued by his legal representatives that Israel did not have jurisdiction, at the time of these offences. Further, the crimes had occurred outside Israel and the victims were not Israeli nationals. Thus, none of the specific heads upon which jurisdiction could be claimed existed. Moreover, Israel did not exist as a State at the time of the offences, so was claiming jurisdiction over events before its "birth".

The unanimous decision was made, Eichmann was convicted and sentence to death. The Jerusalem District Court found that it had a jurisdiction since charges were brought against him further more these crimes were most serious crimes not only in Israeli law alone. These crimes, which struck at the whole of mankind and shocked the consciences of nations, were grave offences against the law of nation itself. Therefore, so far from International law negating or limiting the jurisdiction of countries with respect to such crimes. State with custody of the suspect may use the universal jurisdiction as the basis of his trial; it must have an acceptance of such jurisdiction within its own national law.

Jurisdiction Matter

The relevance of jurisdiction to International Criminal law may not be immediately obvious, but it is something of a hot topic at present. First of all we have to see that in what circumstances do International Criminal Law has a jurisdiction over a criminal dispute? According to Tadic⁹ appeals jurisdiction, the Appeals chamber affirmed that the temporal and geographical scope of an armed conflict extends beyond the exact time and place of hostilities.¹⁰ It means that actual fighting may not be taken place in certain parts of a territory plagued by war; any breaches committed in these locations against protected persons may warrant the application of humanitarian law if the breaches are connected in some way to be armed conflict.

International Criminal Court

On 17th of July 1998 in Rome the permanent International Criminal Court statute was signed and it was established in 2002 as a permanent tribunal to prosecute International crimes. Unlike the two ad hoc tribunals for Yugoslavia and Rwanda, the International Criminal Court is a permanent Court established by its founding treaty.¹¹ International Criminal Court enjoys subject matter jurisdiction over four core offences; genocide, crime against humanity, war crimes and aggression.

Different Perspective about a "Crime" to be an International

The universal jurisdiction of a crime, many philosophers disagree on the ground that this concept cannot be practically implemented. They fear that it would remove diplomatic protection from their citizens. Many states have opposed the concept of International Crime (America is one of them) by arguing that it is just an idea far away from reality. They further argued that it is not possible to give a common moral standard to the world. Our world has diversity, in culture in traditions and in moral norms and there is an apprehension that the idea of universal jurisdiction of a crime may offend some cultural norms because different acts acquire or lose their criminal nature depending on the culture and context.

Declaring any crime as an International Crime is difficult for many reasons. Two of them are very important. Firstly, how to set a global moral norms for everyone and, secondly, to formulate the mechanism for the country courts to establish their jurisdictions. Most states rejected any super national levels as the appropriate forum of the decision making. Hence global solution to this problem is inherently flawed. United States of America voted against on 17th July 1998 to give universal status to International criminal court at United Nations' diplomatic conference of plenipotentiaries. That's the reason many International organisations are effectively no more than powerless talking shops. In International law and for International Crime bilateral treaties are essential for the universal jurisdiction it cannot be imposed at will.

Though the Idea is Difficult but not Impossible

In order to put these International Criminal Law obligations into practice, states must usually enact implementing legislation which will provide a basis in their legal system for bringing prosecutions for International Crimes committed abroad or bring trial against the suspect in International Criminal Court.

Example

In many states like in UK the ratification process is not automatic. In order to incorporate a treaty into a domestic law a proper legislation is needed in order to ratify the treaty through parliament. The universal declaration of human rights 1948

was signed the then prime minister and it took fifty years to the UK to pass an act of human rights in 1998. The International Criminal Treaties (ICT) can play a significant role in order to achieve the main goal to stop International Crimes but alone it is not possible for ICT, the need is its implementation. Now it is a duty of the contracting parties to give priority to ICT and try to safe guard its main aims from undue influences. The implementation of ICT is a kind of implementations of International law.

Some Possible Reforms

1. Crimes of Universal Jurisdiction

States should ensure that status of International Criminal Law can be safe guarded at all cost.

2. No Immunity for Persons in Official Capacity

National legislatures should ensure that the treaties and conventions must be observe and no one should be immune from the prosecution of criminal trials, whatever the official capacity of the suspect or accused at the time of the alleged crime or any time thereafter is. He must be brought before International Criminal court.

3. No Political Interference

It is suggested that the prosecutor should be given enough power to take a decision to start or stop an investigation or which suitable method should be adopted to prosecute the grave crimes under the International criminal law. The whole process of the prosecution should be crystal clear and should be free from internal and external interference.

4. Grave Crimes under International Criminal Law must be Investigated and Prosecuted without Waiting for Complaints of Victims or others with a Sufficient Interest

Grave crimes under International Criminal Law, where there is sufficient admissible evidence, to prosecute, without waiting for a complaint by a victim or any other person with a sufficient interest in the case.

Conclusion

In the light of above mentioned arguments we can conclude that the concept of a "Crime" to be an "International" is true, vital and essential. It is the need of the time to recognise the grave crimes at an International level, and then punish the criminals, so that the people are aware of it. The current situation regarding the implementation of International Criminal law is not satisfactory. However, there is a positive sign

that at least we have recognized some crimes in an International level; the need is implementation and continuity. These cruel crimes were committed in the past but not internationally recognized because of the absence of treaties.

Now is a time to recognise and enforce such treaties, which condemn these ruthless crimes, no derogation should be allowed at any cost by any member state even at the time of emergency. The International Criminal Court, with no independent enforcement powers is dependent upon the good will of nations to see that Court decisions are accepted. Respect for the court and its effectiveness can only be maintained if the judges perform their duties faithfully and well on behalf of world peace. Nations must decide now to contemplate the significance of International Criminal Law because it will help to curb terrible crimes. No one expects perfection but the enforcement of International Criminal Law is still regarded as a useful tool for the benefit of humankind.

The concept of a crime as International in nature is very significant; this is the time we have to decide where our morals are. As this world has changed in to a global village and most of our norms and values are the same, we have to choose that either we have to live under the barbarous environment with no rule of law, or we need some standards, in order to live prosperous life in this world.

International Criminal court can play a significant role in this regard. I think we have to emphasis more on our moral standard values, which are basic, and recognized as fundamental throughout the world, regardless of any boundaries and political barriers. One way or another it all depends on treaties. Hence, there is a need to give priority to them. As sensible human beings, we must contribute in order to find solutions and resolving these questions. We must build a strong sense in the International community so that the Universal jurisdiction of International Criminal Law become more effective, clear, and should be enforce with full strength so that it could tackle the International crimes efficiently and successfully.

End Notes

¹In 1927, the Kellogg-Briand Pact, has once said:

"The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another". known as the *General Treaty for the Renunciation of War,*

²Cassese A *International criminal Law* (Oxford 2003)

³A Jewish refugee from Poland teach in United States (1944)

⁴L Raphael *Axis Rule in Occupied Europe*. 1944: 82-9

⁵<http://www.usip.org/pubs/specialreports/sr990107.html>

⁶Chambers dictionary.

⁷Statement made by Secretary-General Kofi Annan on the International Day in Support of Victims of Torture, June 26, 2000.

⁸In the district court of Jerusalem criminal case no. 40/61. Before his honour judge Moshe Landau (presiding)

⁹Prosecutor v. Dusko Tadic International Criminal Court. Case No. IT-94-I-R

¹⁰Tadic appeals jurisdiction decision (2 October 1995), para 70.

¹¹ICC statute Art-1.

¹²Amnesty International, USA. Action for Human Rights, hope for humanity Press Release February, 06 2009

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